

Application No. 09/818272
Page 9

Amendment
Attorney Docket No. E16.2H-9670-US02

Remarks

This Amendment is in response to the Office Action dated **October 20, 2004**.

Each issue in the official action is disclosed below.

§112 Rejections

Claims 1, 9, 26 and 30-33 were rejected under 35 USC §112, first paragraph, as failing to comply with the written description requirement. It is asserted that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. In claims 1, 9, and 26 "an overall basic pH", in claims 30 and 32 "high level of metals and minerals", and in claims 31 and 33 "does not produce.. .chlorine" lack clear antecedent basis in the specification as originally filed, and appear to be drawn to new matter.

Although Applicant disagrees, the claims have been amended to remove the reference to the pH of the water. As to the level of metals and minerals in claims 30 and 32, the claims have been amended to remove the degree of "levels", however, there is support in the specification for the water to be treated to have levels of metals and minerals at, among other places, page 3, line 20, to page 4, line 2. These elements are inherent in cooling tower water and in the explanation of the workings of the invention treatment system throughout the specification. One skill in the art of cooling tower systems would know that these water conditions exist in cooling tower systems.

As to the level of chlorine product, once again, this is an inherent result of the workings of the invention treatment system described throughout the specification. The claims have been amended slightly, however, it is pointed out in the description that chlorine is not produced and the addition of chlorine is not needed. Among other places, when describing the inventive water treatment system's use in treating water for poultry, it is pointed out that it is an improvement over prior systems because it does not produce chlorine to treat the water, which is beneficial because poultry are repelled by the scent of chlorine (See page 9, lines 14- 24).

For the above reasons, withdrawal of the rejection is requested.

Application No. 09/818272
Page 10

Amendment
Attorney Docket No. E16.2H-9670-US02

Claims 30-33 were rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is asserted in the action that, in claims 30 and 32, "high level" and, in claims 31 and 33, "significant" are vague and indefinite because it is unclear how these terms limit the claims.

Although applicant disagrees with the objection, the claims have been amended to remove the asserted indefinite nature of the claims.

§103 Rejections

Claims 1-10 and 26-33 were rejected under 35 USC §103(a) as being unpatentable over WO 98/31636 McKay in view of Jansen (US 4790946). It is asserted in the official action that McKay discloses the structure of the cooling and water treatment systems substantially as claimed. However, the reference differs in that McKay fails to recite a titanium electrode coated with ruthenium (actually Jansen teaches a mixture of ruthenium oxide and titanium oxide), but, it is asserted, Jansen discloses that it is known in the art to utilize a titanium electrode with an iridium or ruthenium coating in a system for disinfecting water and it would have been obvious to one skilled in the art to modify the system of McKay in light of Jansen.

Further to Applicant's Remarks dated 9-9-04 and 3-1-04, the rejection is traversed. Jansen offers no motivation to alter the invention of McKay in the manner asserted in the official action. Jansen discloses a complex system and process for a preparation of a disinfectant for drinking and swimming water involving the use of chemicals, predominantly including Chlorine (among other places, see col. 3, lines 48-58). The most significant effect of this invention is to eliminate all chemicals currently used.

The cited motivation in the rejection is the use of disinfecting agents, however, applicant's claimed invention already incorporates chemical-free disinfecting utilities, which comprise only a part of the invention's utilities and uses. Further, in disclosing the complex system of Jansen, ruthenium is only mentioned once as part of a mixture (col. 6, lines 9-14) among possible mixtures which may be used, without identifying ruthenium's purpose or utility in the disinfecting process. There is no indication that ruthenium has any particularly use other than in the overall system, as described. As such, there is no cited guiding motivation to alter the

Application No. 09/818272
Page 11

Amendment
Attorney Docket No. E16.2H-9670-US02

invention of McKay in the manner asserted in the rejection.

For the above reasons, Applicant asserts that the claimed invention is patentable over the cited prior art. Reconsideration is respectfully requested.

Claims 11 and 12 were rejected under 35 USC §103(a) as being unpatentable over WO 98/31636 McKay in view of Jansen and further in view of Humphrey et al.

Dependent claims 11 and 12 are not obvious in light of the cited references for the reasons stated above in regard to the previous rejections, among others.

Applicant believes the claims to be in condition for allowance. If there are further issues to discuss, the Examiner is urged to contact the undersigned at 952-563-3008.

Respectfully submitted,

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